

DIRECTIVE

WORKFORCE INVESTMENT ACT

Number: WIAD06-10

Date: November 14, 2006
69:170:me:10317

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: LWIA NONPERFORMANCE POLICY

EXECUTIVE SUMMARY:

Purpose:

The purpose of this directive is to communicate State of California policy and procedures regarding Local Workforce Investment Areas' (LWIA) minimum performance requirements and the definition of nonperformance. This directive supersedes WIA Directive WIAD02-4, September 18, 2002. This directive is being reissued because the specified performance timeframes in the previous directive have been changed by the Department of Labor (DOL). The policy and procedures apply to performance for the Program Year as reported in the Workforce Investment Act (WIA) Annual Report and are applicable to future program years unless rescinded or superseded by another directive.

Scope:

This directive applies to LWIAs that do not meet the minimum standard on one or more of the required locally negotiated performance measures.

Effective Date:

This directive is effective on the date of its issuance.

REFERENCES:

- WIA Section 136
- DOL Training and Employment Guidance Letter (TEGL) 8-99 (March 3, 2000)
- TEGL 17-05 (February 17, 2006)
- WIA Directive WIAD04-12, Subject: Exemplary Performance Incentive Award (January 21, 2005)

STATE-IMPOSED REQUIREMENTS:

This directive contains State-imposed requirements, which are indicated in ***bold, italic type***.

FILING INSTRUCTIONS:

This directive supersedes WIAD02-4, dated September 18, 2002, and finalizes WIA Draft Directive WIADD-129, issued for comment on October 17, 2006. The Workforce Services Division received no comments during the draft comment period. Retain this directive until further notice.

BACKGROUND:

The [WIA Section 136](#) contains the requirements of the performance accountability system to assess the effectiveness of states and local areas in achieving continuous improvement of activities under Title I of WIA. Subsection 136(g) informs states that failure to meet state-adjusted performance levels in any year may result in the provision of technical assistance by DOL, and that sanctions may be applied for failure to meet performance in two consecutive years. Subsection 136(h) specifies the provision of technical assistance, the imposition of corrective actions, and general sanctions that the state may require of local areas not meeting performance.

The DOL TEGL [8-99](#) explains failure to perform as it relates to the federal incentive and sanctions process that applies to states. The TEGL states:

“It is understood that as part of a continuous improvement strategy, states may wish to emphasize improvement on a particular measure (e.g., entered employment) which may have a slightly adverse effect on other measures in the same program area. To allow for these strategies, and to avoid considerations of sanctions for only missing their negotiated goal by a few percentage points, states will not trigger the [federal] sanctions process as long as they have achieved 80% of their negotiated performance levels for each measure.”

A Local Area Work Group (Work Group) met in Sacramento on February 21, 2002, to help the California Workforce Investment Board (State Board) staff determine appropriate policy and procedural recommendations regarding local area nonperformance. The Work Group included members of the State Board, local area boards, local area administrators, and a representative from the California Workforce Association. It was the sense of the Work Group that:

- It would be reasonable for California to apply the same “80 percent trigger” to the local areas that is applied to the states by DOL;
- The State should ensure that nonperforming local areas will not receive more funding for technical assistance than they would have been eligible to receive in incentive awards had they met or exceeded performance under the Exemplary Performance Incentive Award policy (see WIA Directive [WIAD04-12](#)).

POLICY AND PROCEDURES:

Policy:

The State Board’s policy regarding local area nonperformance:

The LWIAs are expected to achieve at least 80 percent of their local performance goal on each performance measure. The LWIAs performing below 80 percent on one or more of the measures will be offered necessary technical assistance the first year.

Nonperformance on one or more of the same performance measures in two consecutive years will result in the Governor imposing sanctions as provided for under WIA Section 136(h)(2)(A).

Procedures:

Based on the performance outcomes reported to DOL in the State's WIA Annual Report, EDD's Workforce Services Division (WSD) will make the determinations of successful performance (see WIA Directive WIAD04-12) and of nonperformance. Nonperformance is defined as an actual performance level of less than 80 percent of goal on one or more of the local performance measures. The Participant and Employer Customer Satisfaction measures are not locally negotiated and LWIAs will not be evaluated on these two measures. The performance measure definitions and calculation methodologies are published in TEGL [17-05](#). These methodologies are subject to change based on changes in the DOL guidance. The evaluation of local performance will be aligned with the requirements for the Annual Report. Performance data will be calculated during December following the close of the most recent performance year. Performance will be assessed regarding those measures for which there is at least one exiter.

A summary nonperformance report for each applicable LWIA will be provided by WSD to the State Board. Applicable LWIAs will be notified in writing by December 31st following the end of each program year regarding non-achievement of the minimum standards required by the State's policy.

If a LWIA is not performing at a minimum of 80 percent on one or more of the measures, WSD staff will work with LWIA staff to identify the LWIA's needs relative to improving performance. ***The LWIAs not meeting the minimum standard on one or more of the required measures must complete and submit the attached Corrective Action and Technical Assistance Plan. The plan must be signed by both the Chief Elected Official and the Local Workforce Investment Board Chairperson, or by their officially designated alternates. The plan is due at the State no later than 60 days after the date of the letter of notification that the LWIA has failed performance. See the subsection "ACTION" for submittal instructions.***

If a need for technical assistance is identified, it may be provided from a variety of sources including local, State, federal and nongovernmental. This may include funding from the State for technical assistance not otherwise available. Funding for technical assistance from the State is contingent upon the availability of funds. ***The LWIA will not receive more funding for technical assistance than it would have been eligible to receive in incentive awards, or that it received as a partial incentive award, under the Exemplary Performance Incentive Award policy described in WIA Directive WIAD04-12.***

The LWIA will be notified regarding the acceptance or nonacceptance of the Corrective Action and Technical Assistance Plan within 30 days of its receipt by the State. If the LWIA has applied for and been granted State technical assistance funds as part of the plan, this information will be included in the notification and the funding will be provided in a subgrant agreement or by modification to an existing master subgrant agreement.

If a LWIA does not achieve at least 80 percent on the same measure(s) for a second consecutive year, the Governor will take corrective action as required in WIA Section 136(h)(2)(A).

ACTION:

Please bring this directive to the attention of all relevant parties.

If the LWIA has received notification of failure to achieve at least 80 percent in one or more of the required performance measures, the attached Corrective Action and Technical Assistance Plan must be completed and submitted no later than 60 days after the date of the notification to:

Mail: Program Section
Workforce Services Division, MIC 69-1
Employment Development Department
P.O. Box 826880
Sacramento, CA 94280-0001

Overnight Mail: Program Section
Workforce Services Division, MIC 69-1
Employment Development Department
800 Capitol Mall
Sacramento, CA 95814

Hand Deliver: Program Section
Workforce Services Division, MIC 69-1
Employment Development Department
750 N Street
Sacramento, CA 95814

INQUIRIES:

If you have any questions concerning this directive, contact your assigned [Regional Advisor](#).

/S/ BOB HERMSMEIER
Chief
Workforce Services Division

Attachment is available on the Internet:

[LWIA Corrective Action and Technical Assistance Plan](#) (DOC)